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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/576,686	05/23/2000	Paul B. Darcy	MFCP.70154	3725

45809 7590 02/08/2007  
SHOOK, HARDY & BACON L.L.P.  
(c/o MICROSOFT CORPORATION)  
INTELLECTUAL PROPERTY DEPARTMENT  
2555 GRAND BOULEVARD  
KANSAS CITY, MO 64108-2613

EXAMINER
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JABR, FADEY S

ART UNIT	PAPER NUMBER
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3628

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/576,686

Applicant(s)

DARCY ET AL.

Examiner

Fadey S. Jabr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-20,30,32-35 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,3-20,30,32-35 and 43-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

Claims **1, 30** and **44** have been amended. Claims **1, 3-20, 30, 32-35**, and **43-45** remain pending and are again presented for examination.

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 October 2006 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims **1, 30** and **44** have been considered but are moot in view of the new ground(s) of rejection.
3. Examiner has agreed to withdraw the Objections to claims 20 and 35 as discussed in the Interview conducted 18 October 2006.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-4, 7-10, 13-20, 30, 32-35, and 43-45 rejected under 35 U.S.C. 103(a) as being unpatentable over Farrar et al., U.S. Patent No. 6,330,552 B1 in view of Feria et al., U.S. Patent No. 7,020,621 B1.

As per Claims 1, 19-20, 30, 34-35, 44 and 45, Farrar et al. discloses a method and system for

accurately estimating the cost of a database query (computer transaction) comprising:

- identifying two or more information technology services utilized to execute the computer transaction (C. 4, lines, 17-22, 45-54, C. 5, lines 27-67).

Farrar et al. fails to *explicitly* disclose the information technology services include telephone services, network access services, maintenance services, software services, support services, and hardware services. However, Farrar et al. discloses using a network connection (network access services) to carry out computer instructions (C. 4, lines 45-54). Further, Feria et al. teaches determining the cost per user of an information technology system. The method includes obtaining base costs, ongoing direct costs, and ongoing indirect costs (C. 1, lines 40-42). Moreover, Feria et al. teaches support service costs, network availability and help desk call rates (C. 11, lines 21-44, C. 14, lines 51- C. 15, line 42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Farrar et al. and include taking into account several service costs as taught by Feria et

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al., because it allows for evaluating and assessing where cost efficiencies can be achieved throughout the entire system.

Farrar et al. further discloses determining a monetary service providing cost associated with the two or more services utilized to execute the transaction, wherein determining the monetary service providing cost comprises,

- identifying each resource utilized to provide the two or more services, (C5, lines 27-67, C. 6, lines 56-61) and
- assigning a portion of the monetary service providing cost of each resource to the computer transaction; (C5, lines 27-67, C. 6, lines 56-61) and
- summing the monetary service providing cost for each resource to determine the monetary cost for the computer transaction in order to pass the monetary cost for the computer transaction to a user executing the computer transaction (C. 6, lines 56-61).

As per **Claim 3**, Farrar et al. discloses wherein equipment is a utilized resource and the monetary service providing cost includes an equipment cost and wherein the determining step includes calculating the equipment cost as a percentage of an overall equipment cost for equipment utilized to execute the transaction (C. 4, lines 17-22; C. 5, lines 27-67).

As per **Claim 4**, Farrar et al. discloses wherein software is a utilized resource and the monetary service providing cost includes a software cost and wherein the determining step includes calculating the software cost as a percentage of an overall software cost for the equipment utilized to execute the transaction (C. 3, lines 22-25).

As per Claim 7 and 33, Farrar et al. discloses wherein the determining step includes determining a cost for a level of quality of the one or more services utilized to execute the transaction (C. 6, lines 56-61).

As per Claim 8, Farrar et al. discloses wherein the step of determining a cost for the quality of the service includes determining a cost for the availability of the one or more services (C. 6, lines 9-19).

As per Claim 9-10, Farrar et al. fails to *explicitly* disclose wherein the availability cost includes an *equipment* cost and wherein the step of determining a cost for the availability includes calculating the equipment cost as a percentage of an overall equipment cost for the equipment utilized to provide the availability of the one or more services. However, Farrar et al. discloses the elapsed time for page faults depends on available *physical memory* and the amount of normal memory used to execute the query (C. 6, lines 9-19). Further, Feria et al. discloses measuring unavailability of the network, either due to planned interruptions, or to technology failures (equipment, software, etc.) (C. 14, lines 51-C 15, line 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Farrar et al. and include taking into account equipment and software costs when determining availability costs as taught by Farrar et al. and Feria et al., because it allows for evaluating and assessing where cost efficiencies can be achieved throughout the entire system.

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As per **Claim 13**, Farrar et al. discloses wherein the step of determining a cost for the quality of the service includes determining a cost of the response time of the one or more services (C. 3, lines 16-32).

As per **Claim 14**, Farrar et al. discloses wherein the response time cost includes an equipment cost and wherein the step of determining a cost for the response time includes calculating the equipment cost as a percentage of an overall equipment cost for equipment utilized to provide the response time of the one or more services (C. 5, lines 25-67).

As per **Claim 15**, Farrar et al. discloses wherein the response time cost includes a software cost and wherein the step of determining a cost for the response time includes calculating the software cost as a percentage of an overall software cost for the equipment utilized to provide the response time of the one or more services (C. 5, lines 25-67).

As per **Claim 18**, Farrar et al. discloses wherein the determining step includes determining a cost for a level of quality of the one or more services utilized to execute the transaction, the method further including the step of combining the monetary service providing cost and the quality cost to define the monetary computer transaction cost (C. 6, lines 56-61).

As per **Claim 33**, Farrar et al. discloses wherein the step of determining a quality cost includes determining an availability cost and a response time (C. 6, lines 9-19, 56-61).

As per **Claim 43**, Farrar et al. discloses identifying a fixed cost resource and attributing a portion of a total monetary service providing cost for the fixed cost resource to the computer transaction (C. 4, lines 7-22), and summing a monetary service providing cost for the fixed cost resource and a monetary service providing cost for the variable cost resource to determine the monetary cost for the computer transaction (C. 6, lines 56-61).

Farrar et al. fails to *explicitly* disclose identifying variable cost resources and determining a portion of the variable cost resources to conduct the transaction. However, Farrar et al. discloses the total cost of a plan may be measured in terms of the time required to produce the first and last row of data resulting from the query (C. 4, lines 7-22). The time required to produce the first or last row of data varies depending on the resources used in the plan. Moreover, Feria et al. teaches obtaining base costs, ongoing direct costs and ongoing indirect costs (C. 1, lines 40-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Farrar et al. and include direct and indirect costs when determining a total cost in a computer environment as taught by Farrar et al. and Feria et al., because it allows for evaluating and assessing where cost efficiencies can be achieved throughout the entire system.

6. Claims **5-6, 11-12, 16** and **17** are rejected under 35 U.S.C. 103(a) as being unpatentable over Farrar et al., U.S. Patent No. 6,330,552 B1 in view of Feria et al., U.S. Patent No. 7,020,621 B1 as applied to claim 1 above, and further in view of Jou et al., U.S. Patent No. 5,822,750.



As per Claims 5-6, 11-12, 16 and 17, Farrar et al. fails to disclose wherein personnel (facility) is a utilized resources and the monetary service providing cost includes a personnel (facility) cost and wherein the determining step includes calculating the personnel (facility) cost as a percentage of an overall personnel (facility) cost for maintaining the software and the equipment utilized to execute the transaction. However, Jou et al. teaches databases users typically seek to retrieve data in the least possible amount of time, to minimize the cost of the query in terms of the required personnel and the processing time (C. 2, lines 10-22). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method and system of Farrar et al. and Feria et al. and include personnel and facility costs and any other resource costs that would factor into the cost of a transaction as taught by Jou et al., because it allows for evaluating and assessing where cost efficiencies can be achieved throughout the entire system.

### *Conclusion*

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fadey S Jabr  
Examiner  
Art Unit 3628

FSJ

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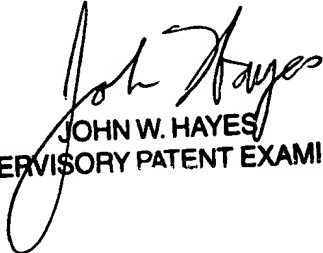
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Hand delivered responses should be brought to the Customer Service Window, Randolph Building, 401 Dulaney Street, Alexandria, VA 22314

  
JOHN W. HAYES  
SUPERVISORY PATENT EXAMINER